

HOUSE BILL No. 1704

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.5-9.

Synopsis: Referendum on LOIT used for debt service. Provides that registered voters of a political subdivision may request, through a petition and remonstrance process, a referendum on bond issues and lease agreements for certain controlled projects if the bonds or leases will be paid from local option income taxes (LOITs). Provides that if no election will be held within six months after the date the auditor certifies the public question, the political subdivision may request a special election. Provides that if a special election is requested in a year in which a general election or municipal election will be held, a special election will be held only if the political subdivision requesting the special election agrees to pay the costs.

Effective: July 1, 2009.

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January 22, 2009, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1704

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.5-9 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]:

4 **Chapter 9. Local Option Income Tax Project Referendum**

5 **Sec. 1. As used in this chapter, "controlled project" means a**
6 **project:**

7 (1) **for which a pledge of local income taxes imposed under**
8 **this article has been made;**

9 (2) **that will require the payment of debt service on bonds or**
10 **lease rental payments on a lease; and**

11 (3) **that will cost the political subdivision more than the lesser**
12 **of twelve million dollars (\$12,000,000) or an amount equal to**
13 **one percent (1%) of the total gross assessed value of property**
14 **within the political subdivision on the last assessment date (if**
15 **one percent (1%) of the total gross assessed value is at least**
16 **one million dollars (\$1,000,000)).**

17 **Sec. 2. A political subdivision may not, in connection with a**

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controlled project, issue bonds or enter into a lease or other obligations payable in whole or in part from an income tax imposed under this article without completing the following procedures:

(1) The proper officers of a political subdivision shall:

(A) publish notice in accordance with IC 5-3-1 and send notice by first class mail to any organization that, on or before December 31, delivers to the officers a written request for notices of any meeting to be held in the following year to consider the adoption of an ordinance or a resolution making a preliminary determination to issue bonds or enter into a lease; and

(B) conduct a public hearing on the preliminary determination before adoption of the ordinance or resolution.

(2) If the proper officers of a political subdivision make a preliminary determination to issue bonds or enter into a lease in connection with a controlled project in whole or in part from income tax imposed under this article, the officers shall give notice of the preliminary determination by:

(A) publication in accordance with IC 5-3-1; and

(B) first class mail to the organizations described in subdivision (1)(A).

(3) A notice under subdivision (2) of the preliminary determination of the political subdivision to issue bonds or enter into a lease in connection with a controlled project must include the following information:

(A) The maximum term of the bonds or lease.

(B) The maximum principal amount of the bonds or the maximum lease rental for the lease.

(C) The estimated interest rates that will be paid and the total interest costs associated with the bonds or lease.

(D) The purpose of the bonds or lease.

(E) A statement that the proposed debt service or lease payments must be approved in an election on a local public question held under section 3 of this chapter.

(4) After notice is given, a petition requesting the application of the local public question process under section 3 of this chapter may be filed by the lesser of:

(A) one hundred (100) persons who are registered voters residing within the political subdivision; or

(B) five percent (5%) of the registered voters residing

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within the political subdivision.

(5) The state board of accounts shall design and, upon request by the county voter registration office, deliver to the county voter registration office or the county voter registration office's designated printer the petition forms to be used solely in the petition process described in this section. The county voter registration office shall issue to a registered voter residing within the political subdivision the number of petition forms requested by the registered voter. Each form must be accompanied by instructions detailing the requirements that:

(A) the carrier and signers must be registered voters;

(B) the carrier must be a signatory on at least one (1) petition;

(C) after the signatures have been collected, the carrier must swear or affirm before a notary public that the carrier witnessed each signature; and

(D) govern the closing date for the petition period.

Persons requesting forms may be required to identify themselves as registered voters and may be allowed to pick up additional copies to distribute to other registered voters. A person who signs a petition as a registered voter must indicate the address at which the person is registered to vote.

(6) Each petition must be verified under oath by at least one (1) qualified petitioner in a manner prescribed by the state board of accounts before the petition is filed with the county voter registration office under subdivision (7).

(7) Each petition must be filed with the county voter registration office not more than thirty (30) days after publication under subdivision (2) of the notice of the preliminary determination.

(8) The county voter registration office shall determine whether each person who signed the petition is a registered voter. However, after the county voter registration office has determined that at least one hundred twenty-five (125) persons who signed the petition are registered voters within the political subdivision, the county voter registration office is not required to verify whether the remaining persons who signed the petition are registered voters. If the county voter registration office does not determine that at least one hundred twenty-five (125) persons who signed the petition are registered voters, the county voter registration office, not more than fifteen (15) business days after receiving a petition,

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shall forward a copy of the petition to the county auditor. Not more than ten (10) business days after receiving the copy of the petition, the county auditor shall provide to the county voter registration office a statement verifying whether a person who signed the petition as a registered voter is in fact a registered voter, as determined by the county voter registration office.

(9) The county voter registration office, not more than ten (10) business days after determining that at least one hundred twenty-five (125) persons who signed the petition are registered voters or after receiving the statement from the county auditor under subdivision (8) (as applicable), shall make the final determination of whether a sufficient number of persons have signed the petition. Whenever the name of an individual who signs a petition form as a registered voter contains a minor variation from the name of the registered voter as set forth in the records of the county voter registration office, the signature is presumed to be valid, and there is a presumption that the individual is entitled to sign the petition under this section. Except as otherwise provided in this chapter, in determining whether an individual is a registered voter, the county voter registration office shall apply the requirements and procedures used under IC 3 to determine whether a person is a registered voter for purposes of voting in an election governed by IC 3. However, an individual is not required to comply with the provisions concerning providing proof of identification to be considered a registered voter for purposes of this chapter. A person is entitled to sign a petition only one (1) time in a particular referendum process under this chapter. Notwithstanding any other provision of this section, if a petition is presented to the county voter registration office not later than thirty-five (35) days before an election, the county voter registration office may defer acting on the petition, and the time requirements under this section for action by the county voter registration office do not begin to run until five (5) days after the date of the election.

(10) The county voter registration office must file a certificate and each petition with:

(A) the township trustee, if the political subdivision is a township, who shall present the petition or petitions to the township board; or

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(B) the body that has the authority to authorize the issuance of the bonds or the execution of a lease, if the political subdivision is not a township; not later than thirty-five (35) business days after the filing of the petition requesting the referendum process. The certificate must state the number of petitioners who are registered voters residing within the political subdivision.

(11) If a sufficient petition requesting the local public question process is not filed by registered voters as set forth in this section, the political subdivision may issue bonds or enter into a lease by following the provisions of law relating to the bonds to be issued or lease to be entered into.

Sec. 3. (a) If a sufficient petition requesting the application of the local public question process has been filed as set forth in section 2 of this chapter, a political subdivision may not issue bonds or execute a lease payable from income taxes imposed under this article in connection with a controlled project unless the political subdivision's proposed debt service or lease rental is approved in an election on a local public question held under this section.

(b) The following question shall be submitted to the voters at an election conducted under this section:

"Shall _____ (insert the name of the political subdivision) issue bonds or enter into a lease for a term of _____ years to finance _____ (insert a description of the controlled project) with estimated total annual debt service or lease rental payments of _____ (insert the estimated payments)?".

(c) The county auditor shall certify the public question described in subsection (b) under IC 3-10-9-3 to the county election board of each county in which the political subdivision is located. After the public question is certified, the public question shall be placed on the ballot at the next primary election, general election, or municipal election in which all voters of the political subdivision are entitled to vote. However, if a primary election, general election, or municipal election will not be held in the six (6) month period after the county auditor certifies the public question, the public question shall be placed on the ballot at a special election to be held:

(1) not earlier than ninety (90) days; and

(2) not later than one hundred twenty (120) days;

after the public question is certified if the fiscal body of the political subdivision that wishes to issue the bonds or enter into the

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lease requests the public question to be voted on in a special election. However, in a year in which a general election or municipal election is held, the public question may be placed on the ballot at a special election only if the fiscal body of the political subdivision that requests the special election agrees to pay the costs of holding the special election. In a year in which a general election is not held and a municipal election is not held, the fiscal body of the political subdivision that requests the special election is not required to pay the costs of holding the special election. The county election board shall give notice under IC 5-3-1 of a special election conducted under this subsection. A special election conducted under this subsection is under the direction of the county election board. The county election board shall take all steps necessary to carry out the special election.

(d) The circuit court clerk shall certify the results of the public question to the county auditor of each county in which the political subdivision is located.

(e) Subject to the requirements of IC 6-1.1-18.5-8, the political subdivision may issue the proposed bonds or enter into the proposed lease rental if a majority of the voters voting on the public question vote in favor of the public question.

(f) If a majority of the voters voting on the public question vote in opposition to the public question, both of the following apply:

(1) The political subdivision may not issue the proposed bonds or enter into the proposed lease rental.

(2) Another public question under this section on the same or a substantially similar project may not be submitted to the voters earlier than one (1) year after the date of the election.

(g) IC 3, to the extent not inconsistent with this section, applies to an election held under this section.

Sec. 4. (a) This section applies to a political subdivision that makes a preliminary determination to issue bonds or enter into a lease in connection with a controlled project under IC 6-3.5-1.1, IC 6-3.5-6, or IC 6-3.5-7. During the period beginning with the preliminary determination to issue bonds or enter into a lease in connection with a controlled project and continuing through the date on which a referendum is conducted under this chapter, the political subdivision seeking to issue bonds or enter into a lease in connection with a proposed controlled project may not promote a position on the referendum by doing any of the following:

(1) Allowing facilities or equipment, including mail and messaging systems, owned or controlled by the political

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subdivision to be used for public relations purposes to promote a position on the referendum unless equal access to the facilities or equipment is given to persons with a position opposite to that of the political subdivision.

(2) Making an expenditure of money from a fund controlled by the political subdivision to promote a position on the referendum. This subdivision does not prohibit a political subdivision from making an expenditure of money to an attorney, an architect, a construction manager, or a financial adviser for professional services provided with respect to a controlled project.

(3) Using an employee to promote a position on a referendum during the employee's normal working hours or paid overtime, or otherwise compelling an employee to promote a position on the referendum at any time.

However, this section does not prohibit an employee of the political subdivision from carrying out duties with respect to a referendum that are part of the normal and regular conduct of the employee's office or agency.

(b) An attorney, an architect, a construction manager, or a financial adviser providing professional services with respect to a controlled project may not spend any money to promote a position on a referendum held with regard to the controlled project. A person who violates this subsection:

(1) commits a Class A infraction; and

(2) is barred from performing any services with respect to the controlled project.

Sec. 5. A political subdivision may not artificially divide a controlled project to avoid the application of this chapter.

SECTION 2. [EFFECTIVE JULY 1, 2009] IC 6-3.5-9, as added by this act, applies to a pledge of income taxes under IC 6-3.5 made after December 31, 2009.

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